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IN THE

Supreme Court of the United States.

OCTOBER TERM 1954

No. .

UNITED STATES EX REL. AUDREY JOAN CZAPKOWSKI,

Petitioner,

v.

JOHN W. HOLLAND, DISTRICT DIRECTOR OF IMMIGRATION AND NATURALIZATION FOR THE FOURTH DISTRICT,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

AUDREY JOAN CZAPKOWSKI prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Third Circuit entered in the above-entitled case on March 24, 1955.

CITATIONS TO OPINIONS BELOW.

The Opinion of the District Court printed in appellant's Appendix below (p. 2a) and submitted herewith is unreported. The Opinion of the Court of Appeals printed in the Appendix hereto, infra pp. 9-10, is reported in 220 F. 2d 436.

JURISDICTION.

The judgment of the Court of Appeals was entered on March 24, 1955 (Appendix, *infra* p. 11). The jurisdiction of this Court is invoked under 28 U. S. C. A., Section 1254(1).

QUESTIONS PRESENTED.

1. Where an Act of Congress attaches the sanction of deportation to an alien's failure to report his current address once every year, "unless he establishes to the satisfaction of the Attorney General that such failure was reasonably excusable or was not wilful," must not the Attorney General provide a rational basis for determining under what circumstances an alien may be relieved from the legal consequences of his violation of the law?

2. Where, under a statutory grant of discretion, the Attorney General sets up a class of cases as to which he refuses to exercise any discretion, and that class is not rationally differentiated from other cases not within the class, and where he refuses to exercise his discretion case by case, is not such blanket policy an arbitrary abuse of authority?

3. Where the language of a statute does not clearly define the standard for determining deportable conduct, is not an order of deportation based on that statute a deprivation of due process of law?

STATUTE INVOLVED.

The statutory provisions involved are Section 241(a)(5), Section 265 and Section 266 of the Immigration and Nationality Act of June 27, 1952, P. L. 414, 82d Congress, Ch. 477, Second Session, 66 Stat. 163, 204, 225, 8 U. S. C. A., Section 1251(a)(5), Section 1305 and Section 1306.

STATEMENT.

An application for writ of habeas corpus to test the validity of a deportation order was filed in the United States District Court for the Eastern District of Pensylvania on January 6, 1954. On October 15, 1954, the District Court denied the application and ordered the petitioner remanded to the custody of the respondent.

The jurisdiction of the District Court was invoked because the case arises under the Immigration and Nationality Act of 1952; and the petitioner was detained and imprisoned by the District Director for the Fourth Immigration District, Philadelphia, Pennsylvania, under a warrant of deportation ordering that she be deported to Australia at the expense of the United States, because of her violation of the provisions of the Immigration and Nationality Act of 1952, in that she failed to furnish notification of her address or other information to the Attorney General in the month of January, 1953, and has not established that such failure was reasonably excusable or was not wilful.

The petitioner is a twenty-five year old female, native and citizen of Australia, whose only entry into the United States occurred at Honolulu, T. H., on January 5, 1951, when she was admitted for permanent residence. From May 1952 to June 1952 she was forced to commit diverse acts of prostitution by known abductors, under threats of bodily harm; and was imprisoned by them and held incommunicado.

On the first opportunity to escape, she reported her predicament to the Federal Bureau of Investigation, who took her to the Immigration and Naturalization Service. On June 27, 1952, a warrant of arrest in deportation was issued by the District Director at Buffalo, New York, and she was taken into custody and detained at Our Lady of Charity Refuge in the same city.

While in detention she was given a hearing under the Warrant of Arrest and an Order was entered by the Hear-

ing Officer recommending her deportation from the United States on the ground that she was found practicing prostitution subsequent to entry. On July 26, 1952 she filed an appeal with the Board of Immigration Appeals at Washington, D. C.; and, on August 5, 1952 she was placed under conditional parole, but retained in detention.

On August 23, 1952, while her appeal was under consideration, she left her place of detention because, as she testified, she feared deportation or apprehension by her abductors. On September 3, 1952, the Board of Immigration Appeals ordered the proceedings terminated and the Warrant of Arrest cancelled. She was never served with notice of this Order of the Board because her whereabouts was unknown; and, on September 8, 1952, the Assistant Commissioner of Immigration filed a motion with the Board of Immigration Appeals to reconsider and withdraw its Order of September 3rd. The motion was granted ex parte and a copy served on the petitioner upon her apprehension on April 13, 1953 by an officer of the Service at Philadelphia, Pennsylvania. Two reopened hearings were held in Philadelphia on April 24th and April 30th, 1953, and two additional charges were then lodged against the petitioner. One of the lodged charges adverted to the alleged moral obliquity under the terms of the 1952 Immigration and Nationality Act. The other was "that she is in the United States in violation of Section 241(a)(5) of the Immigration and Nationality Act in that she has failed to furnish notification of her address and other information in compliance with the provisions of Section 265, and has not established that such failure was reasonably excusable or was not wilful."

During the course of the reopened hearings the petitioner testified that she knew she was required by law to report her address to the Attorney General during January of 1953, but gave as the reason for failing to do so her fear of re-apprehension by the immigration authorities and deportation for acts of prostitution committed under duress,

and fear of possible bodily harm by her abductors if they knew her whereabouts.

On May 25, 1953, the Special Inquiry Officer who presided at the reopened hearings filed an Opinion Ordering the petitioner's deportation on both lodged charges; and an appeal was filed with the Board of Immigration Appeals on May 29, 1953. By Order dated October 27, 1953, the Board dismissed the petitioner's appeal but found her deportable solely on the charge that she had failed to furnish notification of her address. On October 30, 1953, the Attorney General issued a warrant directing her deportation from the United States.

The Court below affirmed the Orders of the District Court on the ground that the Attorney General did not abuse his discretion in determining that the petitioner had not established that her failure to furnish notification of her address "was reasonably excusable or was not wilful." The Court below also held that the language of the statute involved clearly defined the standard of conduct upon which to base an order of deportation upon the authority of *United States v. Spector*, 343 U. S. 169 (1952); *United States v. Ragen*, 314 U. S. 513 (1942); *United States v. Shreveport Grain & Elevator Co.*, 287 U. S. 77 (1932); *Union Bridge Co. v. United States*, 204 U. S. 364 (1907). See also *Jordan v. De George*, 341 U. S. 223, 231-32 (1951).

REASONS FOR GRANTING THE WRIT.

The Court of Appeals has decided an important question of federal law which has not been but should be settled by this Court.

Clearly, the questions presented are of importance in the administration of the immigration laws, since the statute provides a ground for deportation appearing for the first time in immigration legislation, and Congress did not see fit to define the meaning of the language under which the Attorney General has been granted the authority to stay deportation.

The decision of the Court below is believed to be erroneous, since it fails to decide whether the Attorney General's discretion is limited or absolute; and fails to take into consideration the punitive impact of the statute which calls for strict construction of its terms. *Mangoang v. Boyd*, 9 Cir., 205 F. 2d 553, cert. denied 74 S. Ct. 129; *Application of Barnes*, 116 F. Supp. 464, 468.

The Attorney General has established as a matter of administrative policy that fear of apprehension by the immigration authorities does not come within the exception noted in Section 241(a)(5) and Section 265 of the 1952 Act (*Matter of M*, 0300/4309741, Board of Immigration Appeals Interim Decision No. 438, 5/6/53). But he has permitted aliens to petition for or complete their proceedings for naturalization if failure to report their address was occasioned only through ignorance of the law. Obviously, this is as arbitrary, capricious and lacking in rationality as to deny remedial relief from deportation to an alien because of race, color or religious belief.

Courts have no power to review administrative discretion when it is reasonably exercised. *U. S. ex rel. Weddeke v. Watkins*, 2 Cir., 116 F. 2d 369, 373, cert. denied 333 U. S. 876, 68 S. Ct. 904, 92 L. Ed. 1152. But in appropriate circumstances, they can compel correction of an abuse of discretion or can compel an official to exercise his discretion where he has obviously failed or refused to do so. *Mastrapasqua v. Shaugnessy*, 2 Cir., 180 F. 2d 999, 1002. Furthermore, Courts may not interfere with administrative determinations unless upon the record the proceedings were manifestly unfair or substantial evidence to support the finding is lacking or the evidence reflects manifest abuse of discretion. *U. S. ex rel. Adamantides v. Neelly*, 7 Cir., 191 F. 2d 997, 1000.

The presumption is that the instant provision of law is Constitutional. Hence, the Attorney General is duty bound to exercise his discretion within the bounds of reason and fairness. If, however, it be deemed that the Attorney Gen-

eral is not limited in the exercise of his discretion and he is free to ascribe what meaning he will to the words "reasonably excusable or not wilful," then that phrase is so vague and meaningless as to lack a sufficient Constitutional standard to justify this deportation proceeding.

A resident alien is entitled to due process of law. *Wong Yang Sung v. McGrath,* 339 U. S. 33, 70 S. Ct. 445, 94 L. Ed. 616. Deportation is equivalent to banishment or exile. *Fong Haw Tan v. Phelan,* 333 U. S. 6, 68 S. Ct. 374, 92 L. Ed. 433.

Obviously, the Courts are without power to substitute their discretion for that of the Attorney General, in whom the power is vested by statute. But, to carry out the Congressional intent the statute must be given a reasonable construction. *Attorney General of the U. S. v. Ricketts,* 165 F. 2d 193; *Repetto v. Acheson,* 94 F. Supp. 623, 625; *Gualco v. Acheson,* 106 F. Supp. 760, 767; *Perri v. Dulles,* 206 F. 2d 586, 591.

CONCLUSION.

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

FILINDO B. MASINO,
Counsel for Petitioner.

Dated: May 27, 1955.

APPENDIX.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 11,469.

UNITED STATES EX REL. AUDREY JOAN CZAPKOWSKI,

Appellant,

v.

JOHN W. HOLLAND, DISTRICT DIRECTOR OF IMMIGRATION AND NATURALIZATION FOR THE FOURTH DISTRICT.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

Argued March 10, 1955.

Before McLAUGHLIN, STALEY and HASTIE, *Circuit Judges.*

Opinion of the Court.

(Filed March 24, 1955.)

PER CURIAM.

In this habeas corpus proceeding to test the validity of a deportation order, it is clear that the Attorney General did not abuse his discretion in determining under 8 U. S. C. 1251(a)(5) (Section 241(a)(5) of the Immigration and Nationality Act of June 27, 1952, 66 Stat. 204) that the appellant had not established that her failure to furnish notification of her address "was reasonably excusable or was not willful."

Nor do we find any merit in the contentions that the above statute lacks sufficiently definite standards to justify deportation and that it is so vague as to be unconstitutional. The tests of reasonableness and willfulness when applied in a statute to a specific act, as they are here, have been held repeatedly by the Supreme Court to be constitutionally valid standards. United States v. Spector, 343 U.S. 169 (1952); United States v. Ragen, 314 U.S. 513 (1942); United States v. Shreveport Grain & Elevator Co., 287 U.S. 77 (1932); Union Bridge Co. v. United States, 204 U.S. 364 (1907). See also Jordan v. De George, 341 U.S. 223, 231-32 (1951).

The order of the district court of October 15, 1954 will be affirmed.

Judgment.

This cause came on to be heard on the record from the United States District Court for the Eastern District of Pennsylvania and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the order of October 15, 1954 of the said District Court in this case be, and the same is hereby affirmed.

Attest:

IDA O. CRESKOFF,
Clerk.

March 24, 1955.

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In the Supreme Court of the United States

OCTOBER TERM, 1955

No. 109

UNITED STATES, EX REL. AUDREY JOAN CZAPKOWSKI, PETITIONER

v.

JOHN W. HOLLAND, DISTRICT DIRECTOR OF IMMIGRATION AND NATURALIZATION FOR THE FOURTH DISTRICT

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the Court of Appeals (Pet. 9; R. 10) is reported at 220 F. 2d 436. The opinion of the District Court (R. 2) is unreported.

JURISDICTION

The judgment of the Court of Appeals was entered on March 24, 1955 (Pet. 11; R. 12). The petition for a writ of certiorari was filed on May 31, 1955. The jurisdiction of this Court is invoked under 28 U.S.C 1254.(1).

QUESTIONS PRESENTED

1. Whether the statute providing for deportation of an alien who fails to give notice of his address "unless he establishes to the satisfaction of the Attorney General that such failure was reasonably excusable or was not willful" is unconstitutionally vague in failing to fix a standard for the Attorney General's action.

2. Whether the statute was reasonably applied in this case.

STATUTE INVOLVED

Section 241(a)(5) of the Immigration and Nationality Act of 1952, 8 U.S.C. 1251(a)(5), provides in pertinent part:

> Any alien in the United States including an alien crewman) shall, upon the order of the Attorney General, be deported who—
>
> * * *
>
> (5) has failed to comply with the provisions of section 265 unless he establishes to the satisfaction of the Attorney General that such failure was reasonably excusable or was not willful, * * *

Section 265, 8 U.S.C. 1305, provides in pertinent part:

> Every alien required to be registered under this title, or who was required to be registered under the Alien Registration Act, 1940, as amended, who is within the United States on the first day of January following the effective date of this Act, or on the

first day of January of each succeeding year shall, within thirty days following such dates, notify the Attorney General in writing of his current address and furnish such additional information as may by regulations be required by the Attorney General. Any such alien shall likewise notify the Attorney General in writing of each change of address and new address within ten days from the date of such change.
* * *

Section 266(b), 8 U.S.C. 1306(b), provides:

Any alien or any parent or legal guardian in the United States of any alien who fails to give written notice to the Attorney General, as required by section 265 of this title, shall be guilty of a misdemeanor and shall, upon conviction thereof, be fined not to exceed $200 or be imprisoned not more than thirty days, or both. Irrespective of whether an alien is convicted and punished as herein provided, any alien who fails to give written notice to the Attorney General, as required by section 265, shall be taken into custody and deported in the manner provided by chapter 5 of this title, unless such alien establishes to the satisfaction of the Attorney General that such failure was reasonably excusable or was not willful.

STATEMENT

The pertinent facts appear in the findings of fact of the District Court (R. 2-5), as follows:

Petitioner, a twenty-five year old native and citizen of Australia, entered the United States on January 6, 1951, for permanent residence as the wife of a United States citizen (R. 2). In June 1952, she was arrested under a deportation warrant, and after a hearing, was ordered deported "on the ground that she was found practicing prostitution subsequent to entry" (Pet. 4, R. 2-3).[1] On July 26, 1952, she filed an appeal from the order of deportation with the Board of Immigration Appeals, Washington, D. C. On August 5, 1952, she was placed under conditional parole (Pet. 4, R. 3). On August 23, 1952 she violated parole by leaving her place of detention (R. 3).

On September 3, 1952 the Board of Immigration Appeals held that petitioner was not deportable, on the ground that the alleged prostitution was committed under duress (R. 3). Petitioner received no notice of this order because the Board did not know her whereabouts (R. 3). On September 8, 1952, the Assistant Commissioner of the Inspections and Examinations Division of the Service filed a motion with the Board of Immigration Appeals to reconsider and withdraw its order of September 3 (R. 3). This motion was granted on January 5, 1953 (R. 3). After petitioner's apprehension on April 13, 1953, further hearings were held before a special inquiry officer, at which relator was represented by counsel (R. 3). Addi-

[1] In her petition relator asserts that "she was forced to commit diverse acts of prostitution by known abductors, under threats of bodily harm; and was imprisoned by them and held incommunicado." (Pet. 3, 4)

tional charges were lodged against petitioner at these hearings, one charging prostitution and the other that she was in the United States in violation of Section 241(a)(5) of the Immigration and Nationality Act of 1952 (8 U.S.C. 1251(a)(5)) in that she "has failed to furnish notification of her address and other information in compliance with the provisions of Section 265 [8 U.S.C. 1305] and has not established that such failure was reasonably excusable or was not wilful." (R 3-4).

During the reopened hearings petitioner testified that she was aware that she was required to report her current address to the Attorney General during January 1953. She gave as her reason for failing to do so her fear of being taken into custody by the Immigration Service and deported for acts committed under duress and her desire to prevent persons of whom she was afraid from discovering her address. (R. 4.)

On May 25, 1953, the Special Inquiry Officer who conducted the reopened hearings filed an opinion ordering petitioner's deportation on both charges (R. 4). The Board of Immigration Appeals, on October 27, 1953, found petitioner deportable solely on the charge that she had failed to furnish notification of her address and had not established that such failure was reasonably excusable or was not willful (R. 4). On October 30, 1953, petitioner was ordered deported (R. 4).

Petitioner attacked the validity of the deportation order by a writ of habeas corpus in the United States District Court for the Eastern District of

Pennsylvania. The district court denied the writ, holding that the decision of the Board of Immigration Appeals was not arbitrary or capricious (R. 5-7). The Court of Appeals affirmed per curiam (R. 10).

ARGUMENT

Section 241(a)(5) renders an alien deportable for failure to notify the Attorney General of his address unless the alien establishes to the Attorney General's satisfaction that the failure to report was reasonably excusable or not willful. Petitioner argues (Pet. 5-7) that the exercise of discretion can be upheld in this case only if the statute is interpreted to give absolute discretion to the Attorney General, and that, if so interpreted, it is unconstitutionally vague. Neither contention is valid.

1. The standard of "reasonably excusable" is not unconstitutionally vague. It is no more indefinite as a guide to decision than the reasonable care standard, likewise basically factual, which is constantly applied by juries, in determination of negligence upon undisputed facts. Similar findings of reasonableness occur in the concepts of "reasonable doubt," "reasonable diligence" and many established concepts employing the word reasonable. Cf. *Boyce Motor Lines* v. *United States*, 342 U.S. 337; *United States* v. *Ragen*, 314 U.S. 513, 522-524; *Nash* v. *United States*, 229 U.S. 373, 376-378. In this case there is even less basis for attack on the standard of reasonableness than in the cases cited since the standard is not used to

proscribe conduct, but as a guide to the Attorney General in granting relief from the effects of failure to perform prescribed conduct.

2. The standard was not unreasonably applied in this case. Petitioner, who violated her parole, admitted her deliberate failure to report and stated that one of the reasons for her action was that she did not want to be retaken for completion of the deportation proceedings. She was not justified in taking the law into her own hands because she was not certain that her defense of duress would be believed. The whole purpose of the statute would be negated if fear of discovery by immigration officials was a valid excuse for failure to report. Petitioner argues (Pet. 6) that the Attorney General has interpreted the statute arbitrarily in ruling that fear of apprehension by immigration authorities is not a reasonable excuse but that ignorance of the law may be. Clearly a distinction between deliberate and non-deliberate action cannot be deemed arbitrary.

Nor is there basis to attack on habeas corpus the determination that petitioner's second reason, that is, fear of bodily harm from those who had previously abducted her, was not in this case a sufficient reason to excuse her failure to report her address. Discretion to exercise a judgment on the credibility, as well as the sufficiency, of the excuse is vested in the Attorney General. The burden is on the petitioner to show an abuse of that discretion. The courts below correctly found that petitioner had not sustained that burden.

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

SIMON E. SOBELOFF,
Solicitor General.

WARREN OLNEY III,
Assistant Attorney General.

BEATRICE ROSENBERG,
JOSEPH A. BARRY,
Attorneys.

JUNE, 1955

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